

2010-1691410

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF IOWA

OAKGLENN VINEYARDS & WINERY, INC.,
MICHAEL LIEBBE AND VICKI LIEBBE, and
CHRISTOPHER LUETH,

Plaintiff

v.

LYNN WALDING, in his official capacity as
Administrator of Iowa Alcoholic Beverages Division

Defendant

Civil Action No. 3:10-cv-4

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LYNN WALDING, Administrator of Iowa Alcoholic Beverages Division, 1918 S. E.
Hulsizer Road, Ankeny, Iowa 50021-3941

TOM MILLER, Iowa Attorney General
1305 East Walnut Street, Des Moines, IA 50319

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jerry A. Soper/Soper Law Firm, P.C.
5108 Jersey Ridge Road, Davenport, IA 52807-3133

Robert D. Epstein/Epstein, Cohen, Donaoe, Mendes & Seif
50 South Meridian Street, Suite 505
Indianapolis, IN 46204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Theresa E. Hill
Seborah M. Langhear
Signature of Clerk or Deputy Clerk

Date: 1/12/2010
Personally served on me in my office
at 3:30 a.m. on
Jan 14, 2010, by
Polk County Deputy Sheriff,
Deputy U.S. Marshal
Private

General
Type
AG #
Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISIONAL OFFICE

OAKGLENN VINEYARDS & WINERY, INC.,)
MICHAEL LIEBBE AND VICKI LIEBBE, and)
CHRISTOPHER LUETH,)
)
Plaintiffs,)
)
vs.)
)
LYNN WALDING, in his official capacity as)
Administrator of)
Iowa Alcoholic Beverages Division,)
)
Defendant.)

CIVIL COMPLAINT

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 seeking 1) a declaratory judgment that Iowa's statutory scheme which prohibits most out-of-state wineries from selling and delivering wine directly to consumers in Iowa unconstitutionally discriminates against interstate commerce in violation of the Commerce Clause, U.S. Const., Art. I, § 8, and *Granholm v. Heald*, 544 U.S. 460 (2005); and 2) an injunction prohibiting the Defendant from enforcing the ban on direct sales and delivery of wine. The statutes challenged are those portions of Iowa Code §§ 123.56, 123.173, 123.175 and 123.187 that prohibit all out-of-state wineries located in non-reciprocal states from taking orders from Iowa residents by internet, telephone, fax, or personal appearance at the out-of-state winery. Such statutes discriminate against out-of-state wine producers and interfere with and burden the ability of out-of-state wineries from non-reciprocal states to sell, deliver, and ship wine directly to Iowa consumers and retailers.

JURISDICTION AND VENUE

2. The district court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), which confer original jurisdiction on federal district courts to hear suits alleging the violation of rights and privileges under the United States Constitution.

3. The Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue is appropriate under 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff OakGlenn Vineyards and Winery, Inc. ("OakGlenn") is a Missouri corporation with its principal place of business in Hermann, Missouri. It is a commercial winery that holds all relevant federal and Missouri permits to manufacture and sell wine in interstate commerce.

6. Plaintiffs Michael Liebbe and Vicki Liebbe are over the age of 21, are consumers of wine, and are residents of Davenport, Iowa.

7. Plaintiff Christopher Lueth is over the age of 21, a consumer of wine, and is a resident of Iowa City, Iowa. Plaintiff Lueth and Plaintiffs Michael and Vicki Liebbe will be collectively referred to as the "Consumer Plaintiffs".

**COMMERCE CLAUSE VIOLATION COUNT I - DISCRIMINATION AGAINST
OUT-OF-STATE WINERIES FROM "NON-RECIPROCAL" STATES WITH RESPECT
TO DIRECT SALES TO IOWA CONSUMERS**

8. Provisions found in five Iowa statutes restrict the direct sale and shipment of wine in interstate commerce and give favorable treatment to native wine produced in Iowa.

9. Iowa Code § 123.56 states in relevant parts:

1. Subject to rules of the division, manufacturers of native wines from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions,

clover, honey, or any combination of these ingredients, holding a class "A" wine permit as required by this chapter, may sell, keep, or offer for sale and deliver the wine. Sales may be made at retail for off-premises consumption when sold on the premises of the manufacturer, or in a retail establishment operated by the manufacturer. Sales may also be made to class "A" or retail wine permittees or liquor control licensees as authorized by the class "A" wine permit.

3. A manufacturer of native wines may ship in closed containers to individual purchasers inside and outside this state.

4. Notwithstanding section 123.179, subsection 1, a class "A" wine permit for a native wine manufacturer shall be issued and renewed annually upon payment of a fee of twenty-five dollars which shall be in lieu of any other license fee required by this chapter.

6. For the purposes of this section, "manufacturer" includes only those persons who process in Iowa the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

10. Iowa Code § 123.187 states in relevant part:

2. A winery licensed or permitted pursuant to laws regulating alcoholic beverages in a state which affords this state an equal reciprocal shipping privilege may ship into this state by private common carrier, to a person twenty-one years or older, and not more than eighteen liters of wine per month, for consumption or use by the person.

3. The holder of a class "A" or "B" wine permit in this state may ship out of this state by private common carrier, to a person twenty-one years of age or older, not more than eighteen liters of wine per month, for consumption or use by the person.

11. Iowa Code § 123.173(2) provides in relevant part that "All class 'A' premises shall be located within the state."

12. Iowa Code § 123.175(1b) provides in relevant part that an applicant for a beverage license must be "a citizen of the state of Iowa."

13. Iowa Code § 123.2 makes it unlawful to sell or deliver wine except under the terms of a license provided for in chapter 123.

14. OakGlenn is a Missouri winery located in Hermann, Missouri. It does not produce Iowa "native wine."

15. OakGlenn has many Iowa consumer visitors at its winery who have shown a desire to have OakGlenn's wines shipped directly to them at their homes in Iowa. OakGlenn would sell and ship to them if it were lawful to do so.

16. The State of Missouri, the state in which OakGlenn is located, is a non-reciprocal state which revoked its reciprocity statute several years ago.

17. The only state that has a wine-shipping reciprocity statute similar to Iowa's is New Mexico.

18. Due to the statutes contested herein, OakGlenn is unable to sell and ship its wine directly to Iowa consumers such as the Consumer Plaintiffs, and has therefore lost sales and profits.

19. The Consumer Plaintiffs live in Davenport and Iowa City, Iowa and are regular consumers of fine wine from states other than Iowa. They also on occasion purchase and drink Iowa native wines.

20. The Consumer Plaintiffs desire to purchase and have shipped directly to their residences wine from wineries and wine producers located in non-reciprocal states, and would do so if the laws at issue were repealed or struck down.

21. Due to the statutes contested herein, the Consumer Plaintiffs are unable to place orders by internet, telephone, fax, or in person for wine from wineries and wine producers located in non-reciprocal states and have the wine shipped directly to their residences.

22. Some of the wines the Consumer Plaintiffs want to order and have shipped are not available at wine retailers in the areas in which they live.

23. Some of the wines the Consumer Plaintiffs want to order are less expensive when purchased directly from the winery than when purchased from retailers in the areas in which they live.

24. Because of the laws at issue, the Consumer Plaintiffs have been unable to obtain some wine they want, have had to substitute less desirable wine purchased from Iowa retailers and wineries, and have been forced to pay higher prices for some wine.

**COMMERCE CLAUSE VIOLATION COUNT II - DISCRIMINATION AGAINST
"RECIPROCAL" OUT-OF-STATE WINERIES IN FAVOR OF IN-STATE "NATIVE"
WINERIES WITH RESPECT TO DIRECT SALES TO IOWA CONSUMERS**

25. The allegations contained in paragraphs 1-24 are incorporated herein.

26. Pursuant to Iowa Code §123.56(4), the fee for a Class A permit for an Iowa winery producing native wines is \$25.00. Such permit authorizes sales and deliveries to wholesalers, retailers and consumers.

27. OakGlenn and other out-of-state wineries not located in New Mexico are not eligible for Class A wine permits because Iowa Code §§ 123.56(6), 123.173(2), and 123.175(1b) restrict such permits to applicants who are citizens of Iowa, whose premises are located in the state of Iowa, and who process the wine in Iowa.

28. An out-of-state winery is eligible only for a Vintner's Certificate pursuant to Iowa Code § 123.180, which restricts them to selling wine to wholesalers, does not allow direct sales to consumers or retailers, and costs \$100 per year. Thus, nearly all non-Iowa wineries in the United States cannot sell, deliver, and ship wine to Iowa consumers or retailers.

29. Even if an out-of-state winery is located in a reciprocal state, it would be restricted to shipping eighteen (18) liters of wine per consumer per month pursuant to Iowa Code

§123.187(1), while Iowa wineries have no shipping limit under §123.56(3).

30. The laws of the State of Iowa treat interstate sales and delivery of wine to Iowa consumers and retailers differently from intra-state sales and delivery of wine, discriminate against out-of-state wineries, require reciprocity under other states' laws in order to obtain equal treatment under Iowa law, and provide economic advantages and protection to Iowa wineries and wine sellers, all in violation of the Commerce Clause of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Judgment declaring that the Iowa statutory scheme that prohibits out-of-state wineries from non-reciprocal states from selling, delivering, and shipping their wine directly to Iowa consumers and persons licensed to sell wine at retail is unconstitutional because it discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution.

B. Judgment declaring unconstitutional and enjoining the enforcement of those portions of Iowa Code §§ 123.56, 123.173, 123.175 and 23.187 that prohibit out-of-state wineries from non-reciprocal states from obtaining licenses; taking telephone, internet, fax, and in-person orders for wine from Iowa customers; and from selling, delivering, and shipping wine directly to Iowa consumers and other entities in Iowa licensed to sell wine at retail, upon the same terms and conditions as Iowa wineries producing native wine.

C. Plaintiffs do not request that state officials in Iowa be enjoined from collecting any tax due on the sale of wine.

D. An award of costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

E. Such other relief as the Court deems appropriate to afford Plaintiffs full relief.

Respectfully submitted,

/s/

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